

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BOTTLING GROUP LLC, d/b/a,
PEPSI BEVERAGE COMPANY
Employer,

and

Case No. GR-7-UC-638
GR-7-UC-639

GENERAL TEAMSTER UNION,
LOCAL 406, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Union.

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**GENERAL TEAMSTERS UNION LOCAL 406, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS STATEMENT IN OPPOSITION TO REQUEST OF BOTTLING
GROUP LLC d/b/a/ PEPSI BEVERAGES COMPANY FOR REVIEW OF REGIONAL
DIRECTOR'S DECISION AND ORDER**

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INTRODUCTION

On April 14, 2010, the Regional Director issued a Decision and Order granting the General Teamster Union Local 406's unit clarification petition to clarify the contractual bargaining unit to include four MEM delivery and install employees. See D&O. The Regional Director denied the Employer's request to exclude these employees from the Union. See D&O. The Regional Director properly applied clear Board precedent in granting the Union's petition and denying the Employer's petition. The Regional Director applied the facts and the law in determining that the four delivery and install positions share a "sufficient community of interest with the service technicians who also work under the MEM classification at the Grand Rapids facility to continue to be included in the unit." See D&O at 2. The Employer's Request for Review must be denied as it does not fit within any of the "compelling reasons" set forth in Rule 102.67(c). The Union respectfully requests that the Board deny the Employer's Request for Review and affirm the April 14, 2010 Decision and Order.

FACTS

At issue in this case are four Delivery and Install positions in the Marketing Equipment Management department (MEM) of the Employer, Pepsi Bottling group. On February 24, 2010, the Union filed a Petition for a Unit Clarification. See Board's Exhibit 1(a).¹ The Union sought to include four delivery and install positions, part of the MEM Department, in its bargaining unit. See *id.* The recognition clause of the collective bargaining agreement between the Union and the Employer provides as follows:

The Employer recognizes and acknowledges that the Union is the exclusive representative in collective bargaining with the Employer of its Fleet Mechanics, Customer Representative, **MEM** and Warehouse employees at its warehouse locations at 3700 Kraft

¹ Exhibits and citations to the hearing transcript are attached to the Employer's request for review. Accordingly, they are not attached hereto.

Avenue SE, Grand Rapids, MI 49512 and 4900 Paul Court Road, Norton Shores, Michigan 49441, but excluding all office clerical employees, professional employees, guards and supervisors as defined by the National Labor Relations Act.

See Employer Ex. 1 at 3 (emphasis added). “MEM” stands for Marketing Equipment Management. See Tr. p. 14.

On February 26, 2010, the Company filed a Petition for a Unit Clarification. See Board’s Exhibit 1(b). The Company proposes the following clarification:

Included: All Drivers, Fleet Mechanics, Warehouse Persons and Field Service Techs employed by the Employer at its facilities at 3700 Kraft Avenue SE, Grand Rapids, MI and 4900 Paul Court Road, Norton Shores, MI.

Excluded: All office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, and Equipment Delivery/Installers (also called Fountain Install employees) and Delivery-Vending/Cooler employees (also called Vending /Visi or Cooler Mover employees) who pick up their vehicles and supplies in the parking lot of the Employer’s facility at 3700 Kraft Avenue SE, Grand Rapids, MI.

See Board’s Exhibit 1(b).

The four positions at issue were previously included in the Union’s bargaining unit until 1997, when the Company moved the work to Lansing, a non union facility located 68 miles from the Grand Rapids facility. Prior to 1997, the Grand Rapids facility had a fully functional MEM shop area where they stored equipment, prepared equipment, delivered equipment, installed equipment and repaired the equipment after installation. See Tr. p. 16. All employees in the Grand Rapids MEM department were classified as “Journeyman Mechanics.” See Tr. p. 27; 97. The Journeyman Mechanics were responsible for delivering and installing fountain equipment and vending equipment including vending machines and coolers. In addition, the Grand Rapids facility also employed Field Service Technicians, who were responsible for servicing the equipment after the equipment was installed. See Tr. p. 16. The Grand Rapids facility included

classifications in addition to the MEM's, including warehouse, sales, fleet and office. See Tr. p. 30. In 1997, the MEM Department in Grand Rapids consisted of 11 employees. See Tr. p. 114.

On February 24, 1997, the Company opened the MEOC in Lansing, a non-union facility. See Tr. p. 17. The Lansing MEOC was located 68 miles from the 3700 Kraft Avenue location in Grand Rapids, Michigan. See Tr. p. 34. "MEOC" stands for Marketing Equipment Operations Center. See Tr. p. 15. The purpose of the MEOC was to centralize all equipment sourcing for vending machines, coolers and fountain equipment. See Tr. p. 15. When the Lansing MEOC opened, it eliminated the four Delivery and Install positions in Grand Rapids. See Tr. p. 17. The Grand Rapids MEM Department continued after the Lansing MEOC opened in 1997. See Tr. p. 115.

The Grand Rapids Delivery and Install employees were moved to the Lansing MEOC when the MEOC opened. See Tr. p. 26. The employees that were moved to Lansing were not required to have any new or different training or skills than those utilized when working in Grand Rapids. See Tr. p. 26. The employees were able to transfer to Lansing as soon as it opened. See Tr. p. 27. The Lansing MEOC serviced the lower peninsula of Michigan with the exception of Detroit.² See Tr. p. 18.

Terry Fishburn has worked for Pepsi for twenty-five years. See Tr. p. 94. Mr. Fishburn has held a number of classifications including: merchandiser, warehouse employees, sales employee, MEM, general vending, training mechanic and MEM technician. See Tr. p. 94. Mr. Fishburn has worked in the MEM department for fifteen years. See Tr. p. 95. Mr. Fishburn was

² The Company created a "drop and hook" site in Grayling, Michigan. See Tr. p. 19. "Drop and hook" means that the Company prepares the equipment for the customer installation at the Lansing MEOC, loads it onto a truck in route order and drops it in a parking lot in Grayling, Michigan where the trailer can be hooked to another truck and the equipment on the trailer delivered from there. See Tr. p. 19. The Company determined it would be more efficient to utilize the drop and hook method with Grayling, rather than spend time driving equipment to the locations in the Grayling customer base. See Tr. p. 19-20.

in the MEM department in 1997 when the Lansing MEOC opened. See Tr. p. 97. Prior to 1997, Mr. Fishburn performed delivery and install work. See Tr. p. 120. His classification at the time was “journeyman mechanic.” See Tr. p. 99. Mr. Fishburn explained that if he wanted to remain an employee of Pepsi, he, along with three other employees, were required to move to the MEOC in Lansing. See Tr. 97. When he moved to the Lansing MEOC his job title was changed to install/delivery. See Tr. p. 99.

Mr. Fishburn explained that when he moved to the Lansing MEOC he was taken out of the Grand Rapids bargaining unit and was an at-will employee. See Tr. p. 99. Fishburn performed the same work in the Lansing MEOC as he had performed in Grand Rapids. See Tr. p. 99-100.³

On November 23, 2009, the Lansing MEOC closed and the Company opened an MEOC in Flint, Michigan. See Tr. p. 23. The Flint MEOC is approximately 113 miles from the Grand Rapids facility. See Tr. p. 34. Upon the closure of the Lansing MEOC, the Company returned the four Delivery and Install positions to Grand Rapids. See Tr. p. 39. The four employees became home-based. See Tr. p. 43. In 1997, the MEM employees in Grand Rapids were already home based before the Lansing MEOC opened. See Tr. p. 28.

Since the Flint MEOC’s opening, the equipment, i.e. vending machines and fountain machines, are prepared in Flint and is loaded onto trucks. See Tr. p. 44. The trucks are brought overnight to the Grand Rapids location at 3700 Kraft Avenue, the same location where the Union’s bargaining unit is located. See Tr. p. 44; Employer Ex. 1. The Delivery and Install employees go to the Kraft Avenue location and pick up the trailers. See Tr. p. 44. The Grand Rapids Delivery and Install employees then deliver the equipment to the customers. See Tr. p.

³ Mr. Fishburn bid on an open position in the Grand Rapids facility a year and a half after being transferred to the Lansing MEOC. See Tr. p. 98-99. Mr. Fishburn has been at the Grand Rapids facility and part of the bargaining unit since then and is a home based employee. See Tr. p. 119.

44. Currently trucks come from the Flint MEOC four times per week to Grand Rapids. See Tr. p. 44.

When the Flint MEOC opened and the four positions returned to Grand Rapids, the Company did not assign a supervisor from the Grand Rapids facility. Instead, there are two supervisors for the Grand Rapids positions and they are located at the Flint MEOC. See Tr. p. 46. Additionally, the Grand Rapids Delivery and Install employees are on the Flint MEOC seniority list. See Tr. p. 47.

The bargaining unit still includes the Field Service Techs, which are part of the MEM department. See Employer Ex. 1. Field Service Techs service equipment, including vending machines, fountain and coolers. See Tr. p. 63; Employer Ex. 4, 5. Field Service Techs also perform preventative maintenance. See Tr. 63. The Field Service Techs service the equipment that the delivery and install people deliver and install. See Tr. p. 66. Field Service Techs wear the same uniforms as the Delivery and Install employees. See Tr. p. 70. Like the Delivery and Install employees, the Field Service Techs are home-based. See Tr. p. 119.

The Delivery and Install positions in Grand Rapids deliver to the same areas that the Field Service Techs perform their job duties. See Employer Ex. 2; 3. The Grand Rapids Field Service Techs interact on a regular basis with the Delivery and Install positions. See Tr. p. 60-64. For example, if a Delivery and Install employee installs equipment but the equipment has a leak or other mechanical error, the Delivery and Install employee will contact the Field Service Tech to discuss and service the issue. See Tr. p. 60-64. Terry Fishburn explained that Field Service Techs and the Delivery and Install employees support each other. See Tr. p. 118.

On March 16, 2010, a hearing was held on the parties' petitions. On April 14, 2010, the Regional Director issued a Decision and Order. The Regional Director held that the "Union's

request to clarify the contractual bargaining unit to continue to include MEM delivery and install employees is granted, and the Employer's request to exclude these employees is denied." See D&O at 10.

On May 26, 2010, the Employer filed a Request for Review of the Regional Director's Decision. Pursuant to Rule 102.67(c), the Union files this Statement in Opposition.

ARGUMENT

A. STANDARD OF REVIEW

Rule 102.67(c) governs requests for review and provides as follows:

(c) The Board will grant a request for review only where compelling reasons exist therefore. Accordingly, a request for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.

(2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

See Rule 102.67(c). It is well recognized that "the Board will grant requests for review only when 'compelling reasons' exist." See *Shaw Supermarkets*, 343 NLRB 963 (2004); see also *KFC National Management Co.*, 214 NLRB 232 (1974)(recognizing that the Board will only grant requests to review when one of the "compelling reasons" enumerated in Rule 102.67 exists).

None of the reasons set forth in Rule 102.67 apply in this case. Moreover, the Employer has offered no compelling reasons to grant its request for review. Therefore, the Union respectfully requests that the Board deny the Employer's request for review.

B. THE DECISION AND ORDER DID NOT DISREGARD THE POSITION OF THE PARTIES OR CLEAR BOARD PRECEDENT IN DENYING THE EMPLOYER'S PETITION AND GRANTING THE UNION'S PETITION

Contrary to the Employer's claim, the Regional Director properly applied board precedent in denying the Employer's Petition and granting the Union's petition. The Employer claims that the Regional Director "disregarded the position of the parties and the clear Board precedent . . ." See Employer's Brief at 31.

To the contrary, the Regional Director relied on clear Board precedent in determining that "unit clarification petitions, although most frequently used to clarify unit placement issues, also have been used to clarify unit scope issues." See D&O at 8, citing *Armco Steel Co.*, 312 NLRB 257, 259 (1993); see also *Developmental Disabilities Institute, Inc.*, 334 NLRB 1166, 1168 (2001), *Massachusetts Teachers Ass'n*, 236 NLRB 1427, 1429 (1978); *Union Electric Co.*, 217 NLRB 666, 667 (1975).

The Regional Director relied on Board precedent and found as follows:

In the instant matter, the Grand Rapids delivery and install employees perform the same basic functions that historically have been performed by Unit employees. They deliver and install vending machines and fountain equipment. This is the same equipment that is serviced by the service technicians. MEM department employees at the Grand Rapids facility previously delivered and installed equipment as part of the Unit work.

See D&O at 8.

The Employer claims that the controlling precedent in this case is the Board's decision in *Coca Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993). *Coca-Cola* is not applicable to this case as it is distinguished on its particular facts. In *Coca-Cola*, the Union filed a UC petition

to clarify the existing unit to include production (bottling) employees that were hired in 1992. The existing unit consisted of warehouse distribution, sales, drivers, mechanics and vending machine repair employees. The production employees were included in the unit when it was first certified in 1961 and successive bargaining agreements included the production classification in the recognition clause. The Employer ceased production operations in 1980 and from 1980 to 1992 “had no production operations and employed no production employees.”⁴

The Board held that it was immaterial whether the production employees were included in the successive recognition clauses because the employer ceased production operations and employed no production employees. The Board found as follows:

[T]he 12-year hiatus, when the Employer in fact had no production employees, is controlling. In representation cases in general and unit clarification proceedings in particular, the Board looks to the actual, existing composition of units and to employees actually working to determine the composition of units, not to abstract grants of recognition.

See *Coca Cola*. In addition, the Board found that the production employees had a community of interest separate and distinct from the current bargaining unit employees. The Board based this in part on the fact that the production employees work in a separate walled off area of the facility, were engaged in different work, for the most part use different skills and have not interchanged with unit employees.

The Regional Director recognized that *Coca Cola* is inapposite to this case:

Compare with *Coca Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993)(Board denied the union’s petition to clarify a unit of warehouse employees to include production employees who had previously been in the unit, in part because during the 12 year hiatus when there were no production employees in the unit, the

⁴ The Employer’s speculation in Footnote 12 should be rejected. See Employer’s Request for Review at 34, fn. 12. The facts stated in the *Coca-Cola* decision clearly indicate that during the 12 year “hiatus period,” the production work ceased. As the Board noted in *Coca-Cola*, it was this cease in production that was the controlling factor in its decision.

employer ‘ceased production operations. . . and had no production operations and employed no production employees’’).

See D&O at 8.

Coca-Cola is distinguishable in two respects. First, in *Coca-Cola*, the employer ceased productions for a period of twelve years. During that time, the contract continued to include production employees in the recognition clause. There were no employees actually working. Rather, the production employees were abstractly granted recognition. The opposite is true in this case. The Company did not cease its delivery and install work when it removed the delivery and install employees from Grand Rapids in 1997. The Company simply moved the work to the Lansing MEOC, a non union facility. Had the Company not opened the Lansing MEOC, the Delivery and Install positions would have remained in the bargaining unit. The Lansing MEOC was the sole reason that the Delivery and Install positions were removed from the bargaining unit in 1997. The reason for the exclusion of four positions from the bargaining unit from 1997 to the present has been eliminated.

Second, in *Coca-Cola*, the production employees had no community of interest with the existing bargaining unit. The same is not true in this case. As discussed at length in Section C below, the Delivery and Install employees share a significant community of interest with the field service technicians, also in the bargaining unit. As the Regional Director properly recognized:

The Grand Rapids delivery and install employees perform the same basic functions that historically have been performed by Unit employees. They deliver and install vending machines and fountain equipment. This is the same equipment that is serviced by the service technicians. MEM department employees at the Grand Rapids facility previously delivered and installed equipment as part of the Unit work.

See D&O at 8.

The Employer additionally claims that the Regional Director's D&O contains "misstatements of facts." See Employer's Brief at 36-38. First, the Employer objects to the Regional Director's statement that four employees were "relocated from Lansing, Michigan in November 2009, to work out of the Employer's facility located in Grand Rapids, Michigan." See D&O at 2; Employer's Brief at 36. The Employer claims that the four employees were "moved to the Flint MEOC in November 2009." See Employer's Brief at 36. This is a misstatement. There is nothing in the record to even suggest that the Delivery and Install employees now working out of Grand Rapids relocated to Flint. The Delivery and Install employees report to the Grand Rapids location (3700 Kraft), not to Flint.

As the record established, Flint is 113 miles from the Grand Rapids facility. See Tr. p. 34. The four delivery and install employees are home-based. See Tr. p. 33. The field service technicians are also home-based. See Tr. p. 17-18. Home-based means that the delivery and install employees work directly out of their houses. See Tr. p. 17. The home-based employees pick up their equipment from the Grand Rapids facility located at 3700 Kraft Avenue. See Tr. p. 39-40. As the Regional Director found:

The delivery and install employees in Grand Rapids take the fountain equipment off the back of the trailer dropped at the Grand Rapids facility, and load it on a box truck that is kept at the facility. Then, driving either the box truck or the tractor trailer, delivery and install employees deliver equipment to customers and install it, breaking through walls and running lines, as necessary.

See D&O at 4. The delivery and install employees "currently deliver and install equipment in the larger Grand Rapids area and their territory overlaps substantially with the area serviced by the Grand Rapids service technicians." See D&O at 9.

Additionally, the Employer objects to the Regional Director's statement that the recognition clause in the collective bargaining agreement "continues to encompass" the MEM

work assigned to the Delivery and Install employees. See Employer's Request for Review at 37. The Employer apparently takes exception to the fact that the contract does not mention "delivery and install employees or delivery and install work." See *id.* As discussed in B below, the Delivery and Install employees have always been included in the MEM department which is specifically listed in the recognition clause. Delivery and Install work has always been bargaining unit work.

C. THE DELIVERY AND INSTALL EMPLOYEES HAVE BEEN HISTORICALLY INCLUDED IN THE BARGAINING UNIT

The Employer claims that the Delivery and Install employees cannot be found to be an accretion to the unit because they have been historically excluded from the bargaining unit and there have been no substantial changes. See Employer's Request for Review at 38. The record indicates otherwise. The Regional Director properly recognized this finding as follows:

The strongest factors favoring the inclusion of the delivery and install employees in the Unit is their previous inclusion in the Unit and the fact that the unit description continues to include all MEM employees, and that the delivery and install employees and service technicians undisputedly continue to perform MEM work.

See D&O at 10.

It is well recognized that "the Board is reluctant to disturb units established by collective bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act."); *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 643 (1974); *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965) ("The Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.").

Had the Company not opened the Lansing MEOC, a non-union facility located 68 miles from Grand Rapids, the Delivery and Install positions would have remained in the bargaining

unit. The Lansing MEOC was the sole reason that the Delivery and Install positions were removed from the bargaining unit in 1997. The Board has found accretion “into an existing bargaining unit is appropriate where the reasons for the exclusion have been eliminated.” See *U.S. West Communications*, 310 NLRB 854 (1993). The reason for the exclusion of four positions from the bargaining unit from 1997 to the present has been eliminated.

Prior to the Lansing MEOC, the Delivery and Install positions were in the bargaining unit. The four positions were in the MEM Department, along with the Field Service Technicians. The Delivery and Install positions performed the same work prior to the Lansing MEOC as they did when they were transferred to the Lansing MEOC. Moreover, the Delivery and Install positions, now back in Grand Rapids, perform the same work they performed at the Lansing MEOC.

The current collective bargaining agreement is key. First and most important, MEM Department employees are included in the Recognition Clause. See Employer Ex. 1. The Recognition Clause includes MEM employees at the 3700 Kraft location. The four positions returned from the Lansing MEOC to Grand Rapids are in the MEM Department and work out of 3700 Kraft.

In addition to the Recognition clause, the collective bargaining agreement includes provisions specific to MEM employees, including seniority and wage rates. See Employer Ex. 1.

The current collective bargaining agreement, coupled with the bargaining history, supports a finding of accretion in this case. The record overwhelmingly established that had the Lansing MEOC not been established, the Delivery and Install positions would never have been removed from the bargaining unit and would have continued to perform the same work that they

now perform back in Grand Rapids. There is no basis to exclude them from the bargaining unit, now that the four positions have been returned to Grand Rapids.

D. THE REGIONAL DIRECTOR PROPERLY DETERMINED THAT THE DELIVERY AND INSTALL EMPLOYEES SHARE A COMMUNITY OF INTEREST WITH THE BARGAINING UNIT

The Regional Director properly recognized that the Delivery and Install employees share a community of interest with the bargaining unit. The Board has defined an accretion as “the addition of employees to an already existing group where there exists such a community of interest that the accreted employees are governed by the other group’s choice of bargaining representative.” See *Roundup Company d/b/a Meyer’s Café & Konditorei*, 282 N.L.R.B. 1, (1986). The Board recognizes that “whether or not a particular operation constitutes an accretion or a separate unit turns, of course, on the entire congeries of facts in each case. See *The Great Atlantic and Pacific Tea Company*, 140 N.L.R.B. 1011, (1963). The relevant factors in determining whether there is an accretion to an existing unit includes: bargaining history; geography; the functional integration of operations, the differences in the types of work and skills of employees; the extent of centralization of management and supervision; and the extent of interchange and contact between the groups of employees. *Granite City Steel Company*, 137 N.L.R.B. 209, (1962); *The Great Atlantic and Pacific Tea Company*, 140 N.L.R.B. 1011, (1963); *Roundup Company d/b/a Meyer’s Café & Konditorei*, 282 N.L.R.B. 1, (1986); *Progressive Service Die Company*, 323 N.L.R.B. 183 (1997).

The Regional Director properly determined that “the MEM service technicians and the MEM delivery and install employees share a sufficient community of interest to warrant he continued inclusion of the delivery and install employees in the Unit.” See D&O at 9. The Regional Director properly cited the following facts that support this finding:

- “They both have off-site supervision and highly centralized upper management.”

See D&O at 9.

- “The field service technicians and delivery and install employees earn a similar hourly rate, within 40 cents.” See D&O at 9.

- “They wear the same uniforms.” See D&O at 9.

- “Their hours of work are similar in that the delivery and install employees work four 10-hour days, and the field service technicians have flexible work weeks with the option of working four 10-hour days.” See D&O at 9.

- “Both groups are home-based, and report to the Grand Rapids facility to pick up trucks, equipment, tools, product and to record hours.” See D&O at 9.

- “The employees interact with each other, e.g., the delivery and install employees contact and receive assistance from the field service technicians when equipment malfunctions arise; the service technicians maintain and repair equipment installed by the delivery and install employees, and cover delivery and install services in their absence on an ad hoc basis.” See D&O at 9.

1. GEOGRAPHIC PROXIMITY

The bargaining unit currently operates out of two locations: 3700 Kraft Avenue in Grand Rapids, MI and in Norton Shores, Michigan. The equipment for the Delivery and Install positions is delivered to the 3700 Kraft Avenue location. They are in the same location as the bargaining unit. According to the Employer, it could have picked any location to deliver the product. The Employer chose the same location as the bargaining unit and the same location that the Delivery and Install positions worked out of prior to their transfer to the Lansing MEOC.

The Flint MEOC is 113 miles from the 3700 Kraft Avenue, Grand Rapids location. See Tr. p. 34. It defies logic to include the Delivery and Install positions with other employees in a facility 113 miles away. This is especially true in this case where the Delivery and Install employees are at the same location as the Field Service Technicians: 3700 Kraft Avenue.

2. INTEGRATION OF OPERATIONS AND EMPLOYEE CONTACT

a. Integration of Operations

The record established that the operations are integrated. Several factors support this finding.

In 1997, when the Lansing MEOC opened, the Grand Rapids employees performing the Delivery and Install work were transferred to the Lansing MEOC. Moreover, when there are openings in the Grand Rapids bargaining unit, employees in the Lansing MEOC (and now Flint MEOC) are entitled to bid on those positions. See Tr. p. 33. In fact, there have been openings in the Grand Rapids bargaining unit that have been filled by Lansing MEOC employees. See Tr. p. 33. Terry Fishburn was one of those employees. See Tr. p. 98-99. Terry Fishburn returned to the Grand Rapids bargaining unit from the Lansing MEOC when a position became available. See Tr. p. 98-99. Other employees did the same. See *id.*

Additionally, in November 2009, when the Employer needed to hire Delivery and Install employees for the Grand Rapids location after the closure of the Lansing MEOC, the Employer was required to post the positions at its locations, including Grand Rapids, if the positions were not filled internally. See Tr. p. 88-89. Furthermore, the HR Manager is involved in the hiring process for the Delivery and Install employees and the Field Service Techs. See Tr. p. 86-87.

All of these factors establish that the operations are integrated. The Employer does not operate the Delivery and Install employees any differently than it operates the MEM Department in Grand Rapids, which includes the Field Service Technicians.

b. Employee Contact

Employee contact is prevalent and constant. The record overwhelmingly established that the Delivery and Install employees cannot function without the Field Service Technicians, and vice versa. As Terry Fishburn explained, “it’s one big team. I mean, we’re supposed to be there for support and helping each other out.” See Tr. p. 123.

The record established that the Delivery and Install positions have regular contact with members of the bargaining unit, in particular the Field Service Technicians. For example, there are times when a Field Service Technician assists with the installation of equipment. See Tr. p. 60. Similarly, when the Delivery and Install employees have a problem with faulty equipment, i.e. leaking fountain, they will contact the Field Service Technicians. See Tr. p. 61. Moreover, the Field Service Technicians are responsible for “backing up” the Delivery and Install employees. See Tr. p. 62. Even the Company witness admitted at times that they will have Grand Rapids Field Service Technicians assist with Delivery and Install. See Tr. p. 60. Moreover, where the Delivery and Install employee is having difficulties, they are expected to contact the Grand Rapids Field Service Technicians with troubleshooting and the like. See Tr. p. 62-64.

3. **SKILLS, DUTIES, AND FUNCTIONS**

First, and most important, the Delivery and Install positions and the Field Service Technicians are interrelated. The positions cannot function without each other. The Delivery and Install employees install the equipment: fountains, coolers and vending machines. The

Field Service Technicians service the same equipment: fountains, coolers and vending machines. Across the country there is a natural progression from the Delivery and Install employees to the Field Service Technicians. See Tr. p. 68-69. This was also true prior to 1997 when the Lansing MEOC opened. As Terry Fisburn explained, he has performed all work, including the Delivery and Install work and the Field Service Technician work.

Second, when the Delivery and Install employees were removed from the bargaining unit and placed at the Lansing MEOC, it was a seamless transfer. The Delivery and Install employees were not required to engage in any additional training or retraining. See Tr. p. 26. The employees were assigned to perform the same work, in the same manner, using the same equipment as when they had been part of the bargaining unit in Grand Rapids. When the Lansing MEOC closed and the Delivery and Install employees were returned to Grand Rapids, again the transfer was seamless. The Employer did not require the employees to engage in any additional training or retraining. The Delivery and Install employees continue to perform the same work, in the same manner, using the same equipment as they did in Lansing and when they were members of the bargaining unit.

Third, the Delivery and Install employees are performing the same work they performed when they were in the bargaining unit and the same work they performed when they were in the Lansing MEOC. See Tr. p. 96. The duties have not changed. The Delivery and Install employees and the Field Service Technicians are still responsible for installing the same equipment. See Tr. p. 96.

Fourth, the Delivery and Install employees service the same territory as the Field Service Technicians. See Employer Ex. 2, 3. While the Delivery and Install employees may have a

larger geographical footprint than the Field Service Technicians, the territories overlap and are largely the same. See Employer. Ex 2, 3.

Finally, other important factors regarding similarity of skills, duties and functions lend further support to accretion:

- The Delivery and Install employees are installing the same equipment (fountains, coolers, vending machines) that the Field Service Technicians service.
- The Delivery and Install employees and the Field Service Technicians are both paid at an hourly rate. See Tr. p. 69. The Delivery and Install employees in Grand Rapids are paid 40 cents more than Field Service Technicians. See Tr. p. 83.
- The Delivery and Install employees and the Field Service Technicians wear the same uniforms. See Tr. p. 70.
- The Delivery and Install employees use the same computer as the Field Service Technicians. See Tr. p. 122.
- The Delivery and Install employees record their time in the same manner as Field Service Technicians. See Tr. p. 122.

4. SUPERVISION

The supervisory structure is the same. The supervisors for the Field Service Technicians and the Delivery and Install employees are off-site. The Delivery and Install employees and the Field Service Technicians work independently. There is no on-site supervisor monitoring the employees.

There is no MEM supervision at the Grand Rapids site. See Tr. p. 40. The Field Service Techs are supervised by a home-based supervisor. See Tr. p. 40. Similarly, the Delivery and Install employees are supervised by two supervisors located in the Flint MEOC. See Tr. p. 46.

However, the supervisor for the Delivery and Install employees and the supervisor for the Field Service Techs report to the same individual who oversees the entire operation. See Tr. p. 41. In other words, both the Delivery and Install employees and the Field Service Techs are funneled up the same chain of command.

E. THE REGIONAL DIRECTOR PROPERLY DETERMINED THAT THE DELIVERY AND INSTALL EMPLOYEES ARE EMPLOYED AT THE GRAND RAPIDS WAREHOUSE LOCATION

The Employer claims that the Delivery and Install employees are “employees at the Flint MEOC” and are not employees of the Grand Rapids Warehouse location. See Employer’s Request for Review at 46.

The cases cited by the Employer are inapposite. In *St. Vincent Hospital*, 344 NLRB 586 (2005), a department secretary was employed at the employer’s 10 Washington Square facility. The agreement listed unit secretaries as an eligible classification but included only employees who are employed in eligible classifications at the Medical Center and Vernon Hill facilities. The agreement did not include employees employed at 10 Washington Square. The Board found that the unit description did not include the department secretary employed at the 10 Washington Square facility. Thus the Board sustained an objection to the inclusion of the employee in the bargaining unit.

In *S&I Transportation Inc.*, 306 NLRB 865 (1992), the unit description included mechanics employed at the employer’s 40th Street location and by implication excluded mechanics employed at any other facility. A challenge was made to the ballot of an employee who sought to be included in the bargaining unit. The challenge was sustained after the Board determined that the employee worked at a different facility from that described in the unit description. Similarly, in *G&K Services, Inc.*, 340 NLRB 921 (2003), the unit description

included “all production and maintenance employees employed by the Employer at its facility in New Orleans, Louisiana.” At issue was whether a loader/unloader who performed duties at the employer’s Saint Rose facility could be included in the bargaining unit. The Board found that the employee must be excluded because the employee did not perform work at the New Orleans facility.

In each case cited by the Employer, the employees were employed at a different facility than agreed to in the unit description and therefore it was determined that the units did not include those positions. That is not the case here. The Delivery and Install employees are employed at the facility agreed to in the unit description: 3700 Kraft Avenue in Grand Rapids. The Delivery and Install employees pick up their equipment from the Grand Rapids facility. The Delivery and Install employees service the same territory as the Field Service Technicians employed out of the Grand Rapids facility. The Regional Director agreed and found as follows:

[T]his is not a case where the install and delivery employees ‘sometimes travel’ to the Grand Rapids facility but do not belong to the unit; rather the install and delivery employees report to the Grand Rapids facility at least twice a week to record their time and obtain the vending machines and fountains they deliver to customers. They do not report to the Flint facility, which is 113 miles away. Except for one meeting in Flint, the record shows no other evidence that install and delivery employees have traveled to Flint since their transfer to Grand Rapids.

See D&O at 9.

The record overwhelmingly establishes that the Delivery and Install employees do not report to the Flint MEOC, contrary to the Employer’s claims otherwise. For example, the Employer claims that a Grand Rapids Delivery and Install employees’ absence is covered by the Flint MEOC. See Tr. p. 48. The Employer produced no records to support this claim. The Employer produced no records to establish that a Flint MEOC employee has ever covered an

absence for a Grand Rapids Delivery and Install employee. In fact, the Employer's witness admitted that it would assign a Grand Rapids Field Service Technician to cover the absence of a Delivery and Install employee. See Tr. p. 60-64.

Similarly, the Employer claims that the Grand Rapids Delivery and Install employees are required to attend meetings at the Flint MEOC. See Tr. p. 49-50. Again, the Employer presented not a single record to support this claim. The Regional Director recognized as much, noting that "there is scant evidence in the record regarding training at the Flint MEOC for the install and delivery employees." See D&O at 7. In fact, the Employer only referenced one meeting, a health fair, that occurred at the Flint MEOC just three weeks prior to the hearing. See Tr. p. 50. The Employer claimed that there are multiple reasons for various meetings, but did not reference any "meeting" other than the health fair. See Tr. p. 49-50. The fact that the Employer can cite only one meeting, which occurred only three weeks ago, establishes that the Employer argument with respect to meetings was manufactured to bolster its claim for the petitioned-for unit.

In fact, as the Regional Director found, there are occasions where both the Field Service Technicians from Grand Rapids and the Delivery and Install employees attend the same meeting. See Tr. p. 123. For example, Terry Fishburn testified that Field Service Technicians have been invited to and attended MEOC parties. See Tr. p. 123. Field Service Techs also go to a baseball game with other Company employees. See Tr. p. 123. See also D&O "The Grand Rapids service technicians have been invited to MOEC parties and have attended. There is an annual baseball event to which all MEM employees in the state are invited." See D&O at 7.

CONCLUSION

For the foregoing reasons, the Union respectfully requests that the Board deny the Employer's Request for Review and affirm the April 14, 2010 Decision and Order of the Regional Director.

Respectfully submitted,
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Dated: June 2, 2010

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CERTIFICATE OF SERVICE

I certify that on June 2, 2010, I have sent a copy of the *General Teamsters Union Local 406, International Brotherhood of Teamsters Statement in Opposition to Request of Bottling Group LLC d/b/a/ Pepsi Beverages Company for Review of Regional Director's Decision and Order* via e-mail and first class mail to the following:

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